

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**JOEL A. LAKE,
Plaintiff,**

vs.

**ENCOMPASS PROPERTY AND
CASUALTY COMPANY
Defendant.**

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§
§

CIVIL ACTION NO. _____

PLAINTIFF'S ORIGINAL COMPLAINT

COMES NOW JOEL A. LAKE, hereinafter also sometimes referred to as Plaintiff, complaining of ENCOMPASS PROPERTY & CASUALTY COMPANY, hereinafter also sometimes referred to as Defendant, and files this his Original Complaint, and for causes of action shows the following:

STATEMENT OF JURISDICTION

- 1.01. Plaintiff is, and was at all times mentioned, domiciled in and a citizen of the State of Texas and a resident of the Eastern District of Texas.
- 1.02. Defendant was, and is now, on information and belief, a national corporation duly organized and existing under the laws of the State of Illinois, having its principal place of business in Northbrook, Illinois at 3075 Sanders Road, Suite H1a.
- 1.03. This action is of a civil nature involving, exclusive of interest and costs, a sum in excess of \$75,000. Every issue of law and fact is wholly between citizens of different states. Jurisdiction is based on 28 USC 1332.

PARTIES

- 2.01. Plaintiff is an individual who resides in Smith County, Texas. The last 3 digits of Plaintiff's driver's license are 932. The last 3 digits of Plaintiff's social security number are 231.

- 2.02. Defendant, (“ENCOMPASS”), is a national insurance corporation doing business in Texas and having its principle offices in Northbrook, Il. It may be served through its registered agent for service, C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX 75201-3136.

FACTUAL ALLEGATIONS

- 3.01. On June 23, 2015, plaintiff sustained serious and permanent bodily injuries hereinafter described as the direct and proximate result of the negligence of Dustin Nichols in the operation of a motor vehicle in Smith County, Texas, as more particularly alleged below.
- 3.02. At such time, plaintiff was protected against loss caused by bodily injury, and resulting from the ownership, maintenance, or use of an uninsured and/or underinsured motor vehicle by a policy of insurance issued on , by defendant, Encompass Property & Casualty Insurance Company. A true and correct copy of such policy is attached as Exhibit A and incorporated herein by reference.
- 3.03 The injuries suffered by plaintiff arose out of an occurrence on June 23, 2015, in Tyler, Smith County, Texas. At such time and place, plaintiff was operating a 2008 Toyota in a safe and lawful manner at the intersection of State Highway 69, also known as Broadway, and Chimney Rock. While in the intersection, plaintiff’s vehicle was struck when the vehicle operated by Dustin Nichols ran a red light causing major damages to plaintiff’s vehicle and seriously injuring plaintiff.

NEGLIGENCE

- 4.01. Plaintiff refers to and incorporates paragraphs 3.01 through 3.03 above as if set forth in their entirety herein.
- 4.02. The collision described above, and the resulting injuries, were proximately caused by the negligent conduct of Dustin Nichols in one or more of the following respects;
- 4.03 Failing to stop in response to an intersection with traffic signals displaying a red light for his lane of traffic;
- 4.04 Failing to maintain a proper speed for the conditions then and there existing;
- 4.05 Failing to keep a proper lookout;
- 4.06. Failing to timely apply his brakes to avoid an accident; and/or

- 4.07 Failing to properly maintain his vehicle so as not to constitute a hazard to other drivers;
- 4.08 Each of these acts and omissions, singularly or in combination, constituted negligence that proximately caused the occurrence made the basis of this action and plaintiff's injuries and damages.

DAMAGES

- 5.01 As a result of the negligence of Dustin Nichols, plaintiff suffered severe bodily injuries including traumatic brain injury, fractured ribs, injuries to his back, neck and shoulder and disabling headaches.
- 5.02 Plaintiff has suffered loss of earning capacity both in the past and will, in all probability, suffer a loss of earning capacity for the remainder of his work life.
- 5.03 Plaintiff has suffered physical impairment in the past, and will, in all probability, continue to suffer physical impairment for the remainder of his life.
- 5.04 Plaintiff has suffered physical pain in the past, and will, in all probability, suffer physical pain for the remainder of his life.
- 5.05 Plaintiff has suffered mental anguish in the past, and will, in all probability, suffer mental anguish for the remainder of his life.
- 5.06 Plaintiff has incurred past medical expenses for reasonable and necessary medical care as a result of his injuries. Said expenses were the usual and customary charges for such services in and around the Eastern District of Texas.
- 5.07 Plaintiff will, in medical probability, require future medical, physical therapy, medication therapy and psychological care for an indefinite time in the future, if not for the remainder of his life.

UNDERINSURED VEHICLE

- 6.01 The motor vehicle causing the plaintiff's damages as described above was at all times material to this action an "underinsured motor vehicle," as that term is defined in the policy of insurance attached as Exhibit A.
- 6.02 In this connection, plaintiff will show that the sum of the limits on all applicable liability bonds and policies providing liability insurance for the ownership, maintenance, or use of such vehicle is insufficient to compensate plaintiff for his injuries and damages.

Specifically, the only available insurance coverage for Dustin Nichols is Thirty Thousand Dollars (\$30,000.00), pursuant to a policy issued by GEICO Insurance Company to Dustin Nichols.

CONDITIONS PRECEDENT

7.01 Plaintiff has fully complied with all the terms of the insurance policy, attached as Exhibit A, as a condition precedent to bringing this suit. Nevertheless, defendant has failed and refused to pay plaintiff benefits under this policy as it is contractually required to do.

JURY DEMAND

Plaintiff hereby requests that all matter of fact be submitted to a jury and hereby makes demand thereof pursuant to Federal Rule of Civil Procedure 38. Plaintiff submits the applicable jury fee concurrent with the filing of his complaint.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that upon final trial, Plaintiff have judgment against the Defendant:

1. Awarding Plaintiff actual damages for the injuries caused to Plaintiff, plus prejudgment interest thereon as provided by law in an amount no more than the policy limits of all applicable policies covering plaintiff at the time of the occurrence in question.
2. For reasonable attorney's fees at the trial level and for any subsequent appeal as allowed by statute or applicable case law.
3. For costs of suit.
4. Postjudgment interest as provided by law from the date of judgment until paid.
5. For such other and further relief, special or general, legal or equitable, as Plaintiff may be shown to be justly entitled to receive.

Respectfully submitted,

/s/ Alan E. Brown

ALAN E. BROWN

Lead Attorney

State Bar No.: 03090500

RAMEY & FLOCK,, PC

100 East Ferguson, Suite 404

Tyler, TX 75702

903/597-3301

Fax: 903/597-2413

abrown@rameyflock.com

ATTORNEY FOR PLAINTIFF

Texas Personal Auto Policy Renewal Policy Coverage Summary

Policyholder:
DAVID LAKE
P O BOX 6776
TYLER TX 75711-6776

Agent:
THOMPSON-HICKS
3919 SOUTH BROADWAY
TYLER TX 75701
PHONE: 903-561-7641 040-965140-0000

Policy Number:
259894000

Policy Period:
11/20/2014 to 11/20/2015

12:01 AM Standard Time

Policyholder Since:
11/2003

Insurance Provided By:
Encompass Property & Cas. Co.
(a Stock Company)
2775 Sanders Rd. Northbrook, IL 60062-6127


24 HOUR CLAIM REPORTING 800-588-7400

MOTOR VEHICLE PROTECTION

(Coverage applies only if a premium or limit is shown)

| | Vehicle 1 | | Vehicle 2 | |
|---|------------------------|-----------------|--------------------|-----------------|
| Description: | 1997 DODGE TRUC BR3500 | | 2005 LEXUS LS430 | |
| VIN: | 3B7HC33D8VM503319 | | JTHBN36F355008349 | |
| Rated Driver: | JONATHAN LAKE | | SHIRLEY LAKE | |
| Class Code: | 1AF | | 6AF | |
| COVERAGES | LIMITS | PREMIUMS | LIMITS | PREMIUMS |
| MOTOR VEHICLE LIABILITY | | | | |
| PERSONAL LIABILITY | | | | |
| BODILY INJURY | \$500,000/500,000 | \$142.00 | \$500,000/500,000 | \$186.00 |
| each person/each accident | | | | |
| PROPERTY DAMAGE | \$500,000 | \$150.00 | \$500,000 | \$173.00 |
| each accident | | | | |
| PERSONAL INJURY PROTECTION | \$2,500 | \$23.00 | \$2,500 | \$21.00 |
| each person | | | | |
| UNINSURED/UNDERINSURED | \$500,000/500,000 | \$59.00 | \$500,000/500,000 | \$58.00 |
| MOTORISTS BODILY INJURY | | | | |
| each person/each accident | | | | |
| PROPERTY DAMAGE | \$100,000 | \$34.00 | \$100,000 | \$34.00 |
| each accident | | | | |
| MOTOR VEHICLE OPTIONAL COVERAGES | | | | |
| OTHER THAN COLLISION | \$500 Deductible | \$114.00 | \$500 Deductible | \$88.00 |
| COVERAGE | | | | |
| COLLISION COVERAGE | \$1,000 Deductible | \$156.00 | \$1,000 Deductible | \$232.00 |
| TOWING | \$40 | \$1.00 | \$40 | \$1.00 |
| PL-860 TEXAS PERSONAL | | \$60.00 | | |
| AUTO COVERAGE | | | | |
| ENHANCEMENT ENDORSEMENT | | | | |
| Premium Per Vehicle | | \$739.00 | | \$793.00 |

259894000


President


Secretary

Continued on Next Page



Page 01 of 07

Texas Personal Auto Policy

Renewal Policy Coverage Summary

MOTOR VEHICLE PROTECTION

(Coverage applies only if a premium or limit is shown)

| | Vehicle 3 | | Vehicle 4 | |
|---|------------------------------|-----------------|--------------------|-----------------|
| Description: | 2005 CHEVY TRUC SILVERADO4WD | | 2008 TOYOTA PRIUS | |
| VIN: | 2GCEK13T451285888 | | JTDKB20U883417104 | |
| Rated Driver: | APRIL LAKE | | JOEL A LAKE | |
| Class Code: | 1A | | 1A | |
| COVERAGES | LIMITS | PREMIUMS | LIMITS | PREMIUMS |
| MOTOR VEHICLE LIABILITY | | | | |
| PERSONAL LIABILITY | | | | |
| BODILY INJURY | \$500,000/500,000 | \$217.00 | \$500,000/500,000 | \$217.00 |
| each person/each accident | | | | |
| PROPERTY DAMAGE | \$500,000 | \$203.00 | \$500,000 | \$203.00 |
| each accident | | | | |
| PERSONAL INJURY PROTECTION | \$2,500 | \$25.00 | \$2,500 | \$25.00 |
| each person | | | | |
| UNINSURED/UNDERINSURED | \$500,000/500,000 | \$58.00 | \$500,000/500,000 | \$58.00 |
| MOTORISTS BODILY INJURY | | | | |
| each person/each accident | | | | |
| PROPERTY DAMAGE | \$100,000 | \$34.00 | \$100,000 | \$34.00 |
| each accident | | | | |
| MOTOR VEHICLE OPTIONAL COVERAGES | | | | |
| OTHER THAN COLLISION | \$500 Deductible | \$71.00 | \$500 Deductible | \$62.00 |
| COVERAGE | | | | |
| COLLISION COVERAGE | \$1,000 Deductible | \$209.00 | \$1,000 Deductible | \$193.00 |
| TOWING | \$40 | \$1.00 | \$40 | \$1.00 |
| Premium Per Vehicle | | \$818.00 | | \$793.00 |

| | Vehicle 5 | | Vehicle 6 | |
|--------------------------------|-------------------|----------|--------------------------|----------|
| Description: | 2010 LEXUS LX570 | | 2009 FORD TRUCK F150 4WD | |
| VIN: | JTJHY7AX4A4034496 | | 1FTPW14V79KB33672 | |
| Rated Driver: | DAVID LAKE | | | |
| Class Code: | 6B | | 1AF | |
| COVERAGES | LIMITS | PREMIUMS | LIMITS | PREMIUMS |
| MOTOR VEHICLE LIABILITY | | | | |
| PERSONAL LIABILITY | | | | |
| BODILY INJURY | \$500,000/500,000 | \$246.00 | \$500,000/500,000 | \$186.00 |
| each person/each accident | | | | |
| PROPERTY DAMAGE | \$500,000 | \$229.00 | \$500,000 | \$173.00 |
| each accident | | | | |

259894000

Continued on Next Page

Page 02 of 07

Texas Personal Auto Policy

Renewal Policy Coverage Summary

MOTOR VEHICLE PROTECTION

(Coverage applies only if a premium or limit is shown)

| | Vehicle 5 | | Vehicle 6 | |
|---|--------------------|-------------------|--------------------|-----------------|
| COVERAGES | LIMITS | PREMIUMS | LIMITS | PREMIUMS |
| PERSONAL INJURY PROTECTION | \$2,500 | \$27.00 | \$2,500 | \$21.00 |
| each person | | | | |
| UNINSURED/UNDERINSURED | \$500,000/500,000 | \$58.00 | \$500,000/500,000 | \$58.00 |
| MOTORISTS BODILY INJURY | | | | |
| each person/each accident | | | | |
| PROPERTY DAMAGE | \$100,000 | \$34.00 | \$100,000 | \$34.00 |
| each accident | | | | |
| MOTOR VEHICLE OPTIONAL COVERAGES | | | | |
| OTHER THAN COLLISION | \$500 Deductible | \$133.00 | \$500 Deductible | \$71.00 |
| COVERAGE | | | | |
| COLLISION COVERAGE | \$1,000 Deductible | \$445.00 | \$1,000 Deductible | \$189.00 |
| TOWING | \$40 | \$1.00 | \$40 | \$1.00 |
| Premium Per Vehicle | | \$1,173.00 | | \$733.00 |

| | Vehicle 7 | | Vehicle 8 | |
|---|------------------------------|----------|--------------------------|----------|
| Description: | 2005 CHEVY TRUC SILVERADO4WD | | 2012 FORD TRUCK F150 4WD | |
| VIN: | 1GCHK29U35E152993 | | 1FTFW1EF8CFA56538 | |
| Rated Driver: | JESUS VASQUEZ | | | |
| Class Code: | 6A | | 1A | |
| COVERAGES | LIMITS | PREMIUMS | LIMITS | PREMIUMS |
| MOTOR VEHICLE LIABILITY | | | | |
| PERSONAL LIABILITY | | | | |
| BODILY INJURY | \$500,000/500,000 | \$166.00 | \$500,000/500,000 | \$109.00 |
| each person/each accident | | | | |
| PROPERTY DAMAGE | \$500,000 | \$176.00 | \$500,000 | \$142.00 |
| each accident | | | | |
| PERSONAL INJURY PROTECTION | \$2,500 | \$16.00 | \$2,500 | \$17.00 |
| each person | | | | |
| UNINSURED/UNDERINSURED | \$500,000/500,000 | \$58.00 | \$500,000/500,000 | \$56.00 |
| MOTORISTS BODILY INJURY | | | | |
| each person/each accident | | | | |
| PROPERTY DAMAGE | \$100,000 | \$34.00 | \$100,000 | \$33.00 |
| each accident | | | | |
| MOTOR VEHICLE OPTIONAL COVERAGES | | | | |
| OTHER THAN COLLISION | \$500 Deductible | \$127.00 | \$500 Deductible | \$192.00 |
| COVERAGE | | | | |
| COLLISION COVERAGE | \$1,000 Deductible | \$201.00 | \$1,000 Deductible | \$146.00 |
| TOWING | \$40 | \$1.00 | \$40 | \$1.00 |

259894000

Texas Personal Auto Policy Renewal Policy Coverage Summary

MOTOR VEHICLE PROTECTION

(Coverage applies only if a premium or limit is shown)

| Vehicle 7 | | | Vehicle 8 | | |
|---------------------|--------|----------|-----------|----------|--|
| COVERAGES | LIMITS | PREMIUMS | LIMITS | PREMIUMS | |
| Premium Per Vehicle | | \$779.00 | | \$696.00 | |

| DISCOUNTS AND CHARGES | Vehicle 1 | Vehicle 2 | Vehicle 3 | Vehicle 4 | Vehicle 5 |
|--|-----------|-----------|-----------|-----------|-----------|
| The following discount(s) or surcharge(s) have been applied to your Texas Personal Auto policy. For specific reasons for the discount(s) or surcharge(s), please contact your agent. | | | | | |
| Loss/Violation Free Discount | Applied | Applied | Applied | Applied | Applied |
| Multiple Car Liability Credit of 20% | Applied | Applied | Applied | Applied | Applied |
| Multiple Car Physical Damage Credit of 15% | Applied | Applied | Applied | Applied | Applied |
| Anti-Lock Brake Discount of 5 % | Applied | Applied | Applied | Applied | Applied |
| Passive Restraint Discount of 15 % | Applied | | | | |
| Passive Restraint Discount of 30 % | | Applied | Applied | Applied | Applied |
| Anti-Theft Discount of 6 % | Applied | | | Applied | |
| Anti-Theft Discount of 15% | | | | | Applied |
| Automobile Theft Prevention Authority Fee | \$2.00 | \$2.00 | \$2.00 | \$2.00 | \$2.00 |

| DISCOUNTS AND CHARGES | Vehicle 6 | Vehicle 7 | Vehicle 8 |
|--|-----------|-----------|-----------|
| The following discount(s) or surcharge(s) have been applied to your Texas Personal Auto policy. For specific reasons for the discount(s) or surcharge(s), please contact your agent. | | | |
| Loss/Violation Free Discount | Applied | Applied | Applied |
| Multiple Car Liability Credit of 20% | Applied | Applied | Applied |
| Multiple Car Physical Damage Credit of 15% | Applied | Applied | Applied |
| Anti-Lock Brake Discount of 5 % | Applied | Applied | Applied |
| Passive Restraint Discount of 30 % | | Applied | Applied |
| Anti-Theft Discount of 10% | | | Applied |
| Automobile Theft Prevention Authority Fee | \$2.00 | \$2.00 | \$2.00 |

TOTAL VEHICLE(S) PREMIUMS AND CHARGES

Your Total Premium For All Vehicles \$6,540.00

DRIVER INFORMATION

| VEH | TERR | COMPREHENSIVE SYMBOL | COLLISION SYMBOL | SEX | M/S | CLASS CODE |
|-----|------|----------------------|------------------|-----|-----|------------|
| 01 | 0063 | 19 | 19 | M | M | 1AF |
| 02 | 0043 | 20 | 20 | F | M | 6AF |
| 03 | 0043 | 17 | 17 | F | M | 1A |
| 04 | 0043 | 14 | 14 | M | S | 1A |

259894000

Continued on Next Page

Page 04 of 07

Texas Personal Auto Policy

Renewal Policy Coverage Summary

MOTOR VEHICLE PROTECTION

(Coverage applies only if a premium or limit is shown)

DRIVER INFORMATION

| VEH | TERR | COMPREHENSIVE SYMBOL | COLLISION SYMBOL | SEX | M/S | CLASS CODE |
|-----|------|----------------------|------------------|-----|-----|------------|
| 05 | 0043 | 25 | 25 | M | M | 6B |
| 06 | 0043 | 16 | 16 | | | 1AF |
| 07 | 0063 | 16 | 16 | M | S | 6A |
| 08 | 0065 | 20 | 17 | | | 1A |

DRIVERS

01 DAVID LAKE
 02 SHIRLEY LAKE
 03 JESUS VASQUEZ
 04 JONATHAN LAKE
 05 JOEL A LAKE
 06 APRIL LAKE

GENERAL POLICY INFORMATION

THE COVERAGES AND LIMITS SHOWN HERE ARE SUBJECT TO THE RESTRICTIONS, CONDITIONS AND EXCLUSIONS OF THE POLICY AND ITS ENDORSEMENTS. PLEASE READ THIS ENTIRE PACKAGE CAREFULLY AND CONTACT YOUR INDEPENDENT AGENT IF YOU HAVE ANY QUESTIONS.

YOUR POLICY IS SUBJECT TO THE FOLLOWING FORMS AND ENDORSEMENTS

| | |
|--------------------|---|
| G-41189-E42(02-98) | TEXAS PERSONAL AUTO POLICY |
| PL860 (12-93) | TEXAS PERSONAL AUTO COVERAGE ENHANCEMENT ENDORSEMENT |
| 501-A (02-93) | SPLIT LIABILITY LIMITS |
| 503-A (02-93) | UNINSURED/UNDERINSURED MOTORISTS-SPLIT LIMITS |
| 524-A (03-92) | TOWING AND LABOR COSTS COVERAGE |
| 552-B (02-93) | MEXICO TOURIST COVERAGE - LIMITED |
| 573-A (11-93) | SUPPLEMENTARY DEATH BENEFIT |
| 593-E (02-03) | TEXAS PERSONAL AUTO POLICY - AMENDATORY ENDORSEMENT |

PLEASE READ THIS IMPORTANT INFORMATION CONCERNING YOUR POLICY

| | |
|---------------------|--|
| *G1-16366-E (01-13) | CONSUMER BILL OF RIGHTS FOR PERSONAL AUTOMOBILE INSURANCE |
| *G1-40173-C (02-09) | ENCOMPASS INSURANCE PRIVACY POLICY FOR CUSTOMERS |
| *G1-74503-A (08-09) | IMPORTANT NOTICE ABOUT RENEWAL DOWN PAYMENTS |
| *G-41148-C42(09-91) | TEXAS LIABILITY INSURANCE CARD |

259894000

Texas Personal Auto Policy Renewal Policy Coverage Summary

GENERAL POLICY INFORMATION

PLEASE READ THIS IMPORTANT INFORMATION CONCERNING YOUR POLICY

*G-53752-F (11-07) IMPORTANT INFORMATION

The forms marked with "***" reflect revised or new forms included with this coverage summary.

SPECIAL INFORMATION

NOTICE: A FEE OF \$2.00 IS PAYABLE IN ADDITION TO THE PREMIUM DUE UNDER THIS POLICY. THIS FEE REIMBURSES THE INSURER, AS PERMITTED BY 28 TAC 5.205, FOR THE \$2.00 FEE PER MOTOR VEHICLE YEAR REQUIRED TO BE PAID TO THE AUTOMOBILE THEFT PREVENTION FUND UNDER TEXAS CIVIL STATUTES, ARTICLE 4413(37), 10, WHICH BECAME EFFECTIVE ON JUNE 6, 1991, AND REVISED SEPTEMBER 1, 2011.

The Total Policy Premium Shown On Your Coverage Summary Includes \$2.00 Per Vehicle Surcharge For Automobile Theft Prevention Authority. This Surcharge Is Assessed At The Beginning Of The Policy Term And Refunds For Deleted Vehicles Are Not Allowed.

We agree to make available to you an installment payment plan as described in Rule 14 of the Texas Automobile Rules and Rating Manual, except when an installment payment plan is prohibited by other rule or by statute.

Encompass Insurance... Continuing our commitment to give you the most comprehensive coverage at the best possible price. For any insurance need, or questions on your policy, contact your independent Encompass Insurance Agent, whose name and number are shown on the first page of this coverage summary.

Texas Personal Auto Policy Renewal Policy Coverage Summary

AGENT'S USE ONLY

Policy Level

Renewal Number 11

| Vehicle Level | Veh 1 | Veh 2 | Veh 3 | Veh 4 | Veh 5 |
|----------------------------------|-------|-------|-------|-------|-------|
| Performance | STD | STD | STD | STD | STD |
| Marital Status | M | M | M | S | M |
| Rate Level | PP | PP | PP | PP | PP |
| Prior Term's/Original Rate Level | PP | PP | PP | PP | PP |
| Alternate Garage Zip | 76665 | 75701 | 75701 | 75701 | 75701 |
| Annual Mileage | | | | 12000 | 10000 |

| Vehicle Level | Veh 6 | Veh 7 | Veh 8 |
|----------------------------------|-------|-------|-------|
| Performance | STD | STD | STD |
| Marital Status | | S | |
| Rate Level | PP | PP | PP |
| Prior Term's/Original Rate Level | PP | PP | PP |
| Alternate Garage Zip | 75704 | 76665 | 76834 |
| Annual Mileage | 05000 | 08000 | 10000 |

259894000

Your Policy

YOUR TEXAS PERSONAL AUTO POLICY- QUICK REFERENCE

TABLE OF CONTENTS (Continued)

| | Page |
|--|-----------|
| PART F General Provisions | 13 |
| Bankruptcy | |
| Changes | |
| Legal Action Against Us | |
| Our Right to Recover Payment | |
| Policy Period and Territory | |
| Termination | |
| Transfer of Your Interest in this Policy | |
| Two or More Auto Policies | |
| ENDORSEMENT | 16 |
| 551. Mexico Coverage - Limited | |

COPY

"WE AGREE TO MAKE AVAILABLE TO YOU AN INSTALLMENT PAYMENT PLAN AS DESCRIBED IN
RULE 14 OF THE TEXAS AUTOMOBILE RULES AND RATING MANUAL, EXCEPT WHEN AN
INSTALLMENT PLAN IS PROHIBITED BY OTHER RULE OR BY STATUTE."

Your Policy

Boston Old Colony Insurance Company
 Continental Insurance Company
 Continental Lloyd's Insurance Company
 Fidelity & Casualty Company of New York
 Firemen's Insurance Company
 Kansas City Fire and Marine
 The Glens Falls Insurance Company
 Niagara Fire Insurance Company

TEXAS PERSONAL AUTO POLICY

THESE GENERAL POLICY PROVISIONS ARE NOT A COMPLETE AND VALID CONTRACT WITHOUT AN ACCOMPANYING DECLARATION PAGE, PROPERLY EXECUTED.

The company designated on the declarations page (a stock insurance company, herein called the company) agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to all of the terms of this policy.

AGREEMENT

In return for payment of the premium and subject to all the terms of this policy we agree with you as follows:

DEFINITIONS

- A. Throughout this policy, "you" and "your" refer to:
1. The "named insured" shown in the Declarations, and
 2. The spouse if a resident of the same household.
- B. "We", "us" and "our" refer to the company providing this insurance.
- C. For purposes of this policy, a private passenger type auto or pickup or van shall be deemed to be owned by a person if leased:
1. Under a written agreement to that person; and
 2. For a continuous period of at least six months.
- D. **"Family member"** means a person who is a resident of your household and related to you by blood, marriage or adoption. This definition includes a ward or foster child who is a resident of your household, and also includes
- E. **"Occupying"** means in, upon, getting in, on, out or off.
- F. **"Trailer"** means a vehicle designed to be pulled by a:
1. Private passenger auto; or
 2. Pickup or van.
- It also means a farm wagon or farm implement while towed by a vehicle listed in F.1. or F.2. above.
- G. **"Your covered auto"** means:
1. Any vehicle shown in the Declarations;
 2. I. Any of the following types of vehicles on the date you became the owner:
 - a. a private passenger auto; or
 - b. a pickup or van with a G.V.W. of 10,000lbs. or less not used for the delivery or transportation of goods, materials or supplies other

Other words and phrases are defined. They are boldfaced when used.

Your Policy

EXCLUSIONS

A. We do not provide Liability Coverage for any person:

1. Who intentionally causes bodily injury or property damage;
2. For damage to property owned or being transported by that person;
3. I. For damage to property:
 - a. rented to;
 - b. used by; or
 - c. in the care of;
 that person.
- II. This exclusion (A.3.I.) does not apply to damage to:
 - a. a residence or private garage; or
 - b. any of the following type vehicles not owned by or furnished or available for the regular use of you or any **family member**:
 - (1) private passenger autos;
 - (2) **trailers**; or
 - (3) pickups or vans

However, the exclusion 3.I. does apply to a loss due to or as a consequence of a seizure of an auto listed in 3.II.b. by a federal or state law enforcement officers as evidence in a case against you under the Texas Controlled Substances Act or the federal Controlled Substances Act if you are convicted in such case.

4. For bodily injury to an employee of that person during the course of employment. This exclusion (A.4.) does not apply to bodily injury to a domestic employee unless workers' compensation benefits are required or available for that domestic employee.
5. For that person's liability arising out of the ownership or operation of a vehicle while it is;

a. being used to carry persons for a fee; this does not apply to a share-the-expense car pool.

b. being used to carry property for a fee; this does not apply to you or any **family member** unless the primary usage of the vehicle is to carry property for a fee; or

c. rented or leased to another; this does not apply if you or any **family member** lends **your covered auto** to another for reimbursement of operating expenses only.

6. While employed or otherwise engaged in the business or occupation of:

- a. selling;
- b. repairing;
- c. servicing;
- d. storing; or
- e. parking;

vehicles designed for use mainly on public highways. This includes road testing and delivery. This exclusion (A.6.) does not apply to the ownership, maintenance or use of **your covered auto** by:

1. you;
2. any **family member**; or
3. any partner, agent or employee of you or any **family member**.

7. Maintaining or using any vehicle while that person is employed or otherwise engaged in any business or occupation not described in Exclusion A.6. This exclusion (A.7.) does not apply to the maintenance or use of a:

- a. private passenger auto;
- b. pickup or van that is **your covered auto**; or
- c. **trailer** used with a vehicle described in 7.a or 7.b above.

8. Using a vehicle without a reasonable belief that that person is entitled to do so.

Your Policy

we will interpret your policy for that accident as follows:

A. If the state or province has:

1. A financial responsibility or similar law specifying limits of liability for bodily injury or property damage higher than the limit shown in the Declarations, your policy will provide the higher specified limit.
2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.

B. No one will be entitled to duplicate payments for the same elements of loss.

FINANCIAL RESPONSIBILITY REQUIRED

When this policy is certified as future proof of financial responsibility, this policy shall comply with the law to the extent required.

OTHER INSURANCE

If there is other applicable liability insurance we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits.

However, any liability insurance we provide to a **covered person** for the maintenance or use of a vehicle you do not own shall be excess over any other applicable liability insurance.

PART B1 - MEDICAL PAYMENTS COVERAGE

INSURING AGREEMENT

A. We will pay reasonable expenses incurred for necessary medical and funeral services because of bodily injury:

1. Caused by accident; and
2. Sustained by a **covered person**.

We will pay only those expenses incurred within three years from the date of the accident.

B. "Covered person" as used in this Part means:

1. You or any **family member**:
 - a. while **occupying** or
 - b. when struck by;
 a motor vehicle designed for use mainly on public roads or a **trailer** of any type.
2. Any other person while **occupying your covered auto**.

EXCLUSIONS

We do not provide Medical Payments Coverage for any person for bodily injury:

1. Sustained while **occupying** any motorized vehicle having fewer than four wheels.
2. Sustained while **occupying your covered auto** when it is:
 - a. being used to carry persons for a fee; this does not apply to a share-the-expense car pool; or

- b. being used to carry property for a fee; this does not apply to you or any **family member** unless the primary usage of the vehicle is to carry property for a fee; or
- c. rented or leased to another; this does not apply if you or any **family member** lends **your covered auto** to another for reimbursement of operating expenses only.

3. Sustained while **occupying** any vehicle located for use as a residence or premises.
4. Occurring during the course of employment if workers' compensation benefits are required or available for the bodily injury.
5. Sustained while **occupying** or, when struck by, any vehicle (other than **your covered auto**) which is:
 - a. owned by you; or
 - b. furnished or available for your regular use.
6. Sustained while **occupying** or, when struck by, any vehicle (other than **your covered auto**) which is:
 - a. owned by any **family member**; or
 - b. furnished or available for the regular use of any **family member**.

However, this exclusion (6.) does not apply to you.

Your Policy

These benefits do not apply to any loss after the **covered person** dies.

- II. Loss of income is the difference between
 - a. income which would have been earned had the **covered person** not been injured; and
 - b. the amount of income actually received from employment during the disability.

- III. If the income being earned as of the date of accident is a salary or fixed remuneration, it shall be used in determining the amount of income which would have been earned. Otherwise, the average monthly income earned during the period (not more than 12 months) preceding the accident shall be used.

3. I. Reasonable expenses incurred for obtaining services. These services must replace those a **covered person** would normally have performed:
 - a. without pay;
 - b. during a period of disability; and
 - c. for the care and maintenance of the family or household.

- II. These benefits apply only if, at the time of the accident, the **covered person**:
 - a. Was not an income producer; and
 - b. was not in an occupational status.

The benefits do not apply to any loss after the **covered person** dies.

C. "Covered person" as used in this Part means:

1. you or any **family member**:
 - a. while **occupying** or
 - b. when struck by;
 - a motor vehicle designed for use mainly on public roads or a **trailer** of any type.
2. Any other person while **occupying your covered auto** with your permission.

EXCLUSIONS

We do not provide Personal Injury Protection Coverage for any person for bodily injury sustained:

1. In an accident caused intentionally by that person.
2. By that person while in the commission of a felony.
3. By that person while attempting to elude arrest by a law enforcement official.
4. While **occupying** or when struck by, any motor vehicle (other than **your covered auto**) which is owned by you.
5. By a **family member** while **occupying** or when struck by, any motor vehicle (other than **your covered auto**) which is owned by a **family member**.

LIMIT OF LIABILITY

The limit of liability shown in the Declarations for this coverage is our maximum limit of liability for each person insured in any one accident. This is the most we will pay regardless of the number of:

1. **Covered persons;**
2. Claims made;
3. Vehicles or premiums shown in the Declarations; or
4. Vehicles involved in the accident.

OTHER INSURANCE

If there is other Personal Injury Protection Insurance, we will pay only our share. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide with respect to a vehicle you do not own shall be excess over any other collectible Personal Injury Protection Insurance.

OTHER PROVISIONS

A. Loss Payments. Benefits are payable:

1. Not more frequently than every two weeks; and
2. Within 30 days after satisfactory proof of claim is received.

Your Policy

2. Owned or operated by a self-insurer under any applicable motor vehicle law.
3. Owned by any governmental body unless:
 - a. the operator of the vehicle is uninsured; and
 - b. there is no statute imposing liability for damage because of bodily injury or **property damage** on the governmental body for an amount not less than the limit of liability for this coverage.
4. Operated on rails or crawler treads.
5. Designed mainly for use off public roads while not on public roads.
6. While located for use as a residence or premises.
4. For the first \$250 of the amount of damage to the property of that person as the result of any one accident.
5. Using a vehicle without a reasonable belief that the person is entitled to do so. This exclusion (A.5.) does not apply to you or any **family member** while using **your covered auto**.
6. For bodily injury or **property damage** resulting from the intentional acts of that person.
- B. This coverage shall not apply directly or indirectly to benefit:
 1. Any insurer or self-insurer under any workers' compensation, disability benefits or similar law;
 2. Any insurer of property.

EXCLUSIONS

- A. We do not provide Uninsured/Underinsured Motorists Coverage for any person:
1. For bodily injury sustained while **occupying** or when struck by, any motor vehicle or trailer of any type owned by you or any **family member** which is not insured for this coverage under this policy.
 2. If that person or the legal representative settles the claim without our written consent.
 3. When **your covered auto** is:
 - a. being used to carry persons for a fee; this does not apply to a share-the-expense car pool; or
 - b. being used to carry property for a fee; this does not apply to you or any **family member** unless the primary usage of the vehicle is to carry property for a fee; or
 - c. rented or leased to another; this does not apply if you or any **family member** lends your covered auto to another for reimbursement of operating expenses only.

LIMIT OF LIABILITY

- A. 1. If separate limits of liability for bodily injury and **property damage** liability are shown in the Declarations for this coverage the limit of liability for "each person" for bodily injury liability is our maximum limit of liability for all damages for bodily injury sustained by any one person in any one motor vehicle accident. Subject to this limit for "each person", the limit of liability shown in the Declarations for "each accident" for bodily injury liability is our maximum limit of liability for all damages for bodily injury resulting from any one motor vehicle accident. The limit of liability shown in the Declarations for "each accident" for **property damage** liability is our maximum limit of liability for all damages to all property resulting from any one motor vehicle accident.

If the limit of liability shown in the Declarations for this coverage is for combined bodily injury and **property damage** liability, it is our maximum limit of liability for all damages resulting from any one motor vehicle accident.

This is the most we will pay regardless of the number of:

- a. **Covered persons;**
- b. Claims made;
- c. Policies or bonds applicable;

Your Policy

2. Ending when **your covered auto** is returned to use or we pay for its loss.

EXCLUSIONS

We will not pay for:

1. Loss to **your covered auto** while it is:
 - a. being used to carry persons for a fee; this does not apply to a share-the-expense car pool; or
 - b. being used to carry property for a fee; this does not apply to you or any **family member** unless the primary usage of the vehicle is to carry property for a fee; or
 - c. rented or leased to another; this does not apply if you or any **family member** lends **your covered auto** to another for reimbursement of operating expenses only.
2. Damage due and confined to:
 - a. wear and tear;
 - b. freezing;
 - c. mechanical or electrical breakdown or failure; or
 - d. road damage to tires.

This exclusion (2.) does not apply if the damage results from the total theft of **your covered auto**.
3. Loss due to or as a consequence of:
 - a. radioactive contamination;
 - b. discharge of any nuclear weapon (even if accidental);
 - c. war (declared or undeclared);
 - d. civil war;
 - e. insurrection; or
 - f. rebellion or revolution.
4. Loss to stereos, radios, and other sound reproducing equipment. This exclusion (4.) does not apply if the equipment is permanently installed in **your covered auto**.
5. Loss to tapes, records or other devices for use with equipment designed for the reproduction of sound.
6. Loss to a camper body or **trailer** not shown in the Declarations. This exclusion (6.) does not apply to a camper body or **trailer** you:
 - a. acquire during the policy period; and

- b. notify us within thirty days after you become the owner.

7. Loss to any vehicle while used as a temporary substitute for a vehicle you own which is out of normal use because of its:
 - a. breakdown;
 - b. repair;
 - c. servicing;
 - d. loss; or
 - e. destruction.
8. When in or upon any **trailer**, loss to:
 - a. TV antennas;
 - b. awnings or cabanas; or
 - c. equipment designed to create additional living facilities.
9. Loss to any of the following or their accessories:
 - a. citizens band radio;
 - b. two-way mobile radio;
 - c. telephone;
 - d. scanning monitor receiver; or
 - e. any device or instrument used for detection of radar or other speed measuring equipment.

This exclusion (9.) does not apply if the equipment is permanently installed in the opening of the dash or console of the auto. This opening must be normally used by the auto manufacturer for the installation of a radio.

10. Loss to any custom furnishings or equipment in or upon any pickup or van. Custom furnishings or equipment include but are not limited to:
 - a. special carpeting and insulation, furniture, bars or television receivers;
 - b. facilities for cooking and sleeping;
 - c. height-extending roofs; or
 - d. custom murals, paintings or other decals or graphics.

This exclusion (10.) does not apply if the value of the custom furnishings or equipment has been reported to us prior to a loss and included in the premium for this coverage.
11. Loss due to or as a consequence of a seizure of **your covered auto** by federal or state law enforcement officers as evidence in a case

Your Policy

- a. submit a sworn proof of loss;
- b. submit to examination under oath.

ADDITIONAL DUTIES FOR UNINSURED/UNDERINSURED MOTORISTS COVERAGE

A person seeking Uninsured/Underinsured Motorists Coverage must also:

1. Promptly notify the police if a hit and run driver is involved;
2. Promptly send us copies of the legal papers if a suit is brought;
3. Take reasonable steps after loss, at our expense, to protect damaged property from further loss; and

4. Permit us to inspect and appraise the damaged property before its repair or disposal.

ADDITIONAL DUTIES FOR COVERAGE FOR DAMAGE TO YOUR AUTO

A person seeking Coverage for Damage to Your Auto must also:

1. Take reasonable steps after loss, to protect **your covered auto** and its equipment from further loss. We will pay reasonable expenses incurred to do this;
2. Promptly notify the police if **your covered auto** is stolen; and
3. Permit us to inspect and appraise the damaged property before its repair or disposal.

PART F - GENERAL PROVISIONS

BANKRUPTCY

Bankruptcy or insolvency of the **covered person** shall not relieve us of any obligations under this policy.

CHANGES

- A. This policy contains all the agreements between you and us. Its terms may not be changed or waived except by endorsement issued by us.
- B. If a change requires a premium adjustment, we will adjust the premium as of the effective date of change in accordance with rules prescribed by the Texas Department of Insurance or its successor. Changes during the policy term that may result in a premium increase or decrease include, but are not limited to, changes in:
 1. The number, type or use classification of the insured autos;
 2. Operators using insured autos;
 3. The place of principal garaging of insured autos;
 4. Coverage, deductible or limits.
- C. If this policy form is revised to provide more coverage without additional premium charge,

we will automatically provide the additional coverage as of the date the revision is effective.

- D. We will compute the premium at the rates in effect on each anniversary date of the policy's inception date for a policy written for more than a full year.

LEGAL ACTION AGAINST US

- A. No legal action may be brought against us until there has been full compliance with all the terms of this policy. In addition, under Liability Coverage, no legal action may be brought against us until:
 1. We agree in writing that the **covered person** has an obligation to pay; or
 2. The amount of that obligation has been finally determined by judgment after trial.
- B. No person or organization has any right under this policy to bring us into any action to determine the liability of a **covered person**

OUR RIGHT TO RECOVER PAYMENT

- A. If we make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another we shall be subrogated to that right. That person shall do:

Your Policy

D. Other Termination Provisions.

1. We may deliver any notice instead of mailing it. Proof of mailing of any notice shall be sufficient proof of notice.
2. If this policy is canceled, you may be entitled to a premium refund. If so, we will send you the refund promptly. The premium refund, if any, will be computed pro rata, subject to the policy minimum premium. However, making or offering to make the refund is not a condition of cancellation.
3. The effective date of cancellation stated in the notice shall become the end of the policy period.
4. Any cancellation or restriction of coverage made without your consent will be of no effect, except as
 - a. provided for in this Termination provision under:
 - (1) Cancellation;
 - (2) Non-renewal; or
 - (3) Automatic Termination; or
 - b. required by the Texas Department of Insurance

TRANSFER OF YOUR INTEREST IN THIS POLICY

- A. Your rights and duties under this policy may not be assigned without our written consent. However, if a named insured shown in the Declarations dies, coverage will be provided for:
 1. The surviving spouse if resident in the same household at the time of death. Coverage applies to the spouse as if a named insured shown in the Declarations.
 2. The legal representative of the deceased person as if a named insured shown in the Declarations. This applies only with respect to the representative's legal responsibility to maintain or use **your covered auto**.
- B. Coverage will be provided until the end of the policy period.

NOTE: Refer to Medical Payment and/or Personal Injury Protection Coverages for Assignment of Benefits.

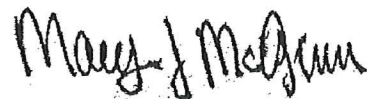
TWO OR MORE AUTO POLICIES

If this policy and any other auto insurance policy issued to you by us apply to the same accident, the maximum limit of our liability under all the policies shall not exceed the highest applicable limit of liability under one policy.

In Witness Whereof, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the company.



President



Secretary